



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

OCT 31 2008

Uniform I No. 408.03-00

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TEMPERATURE

LEGEND:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXX
	XXXXXXXXXXXXXXXXXX
Financial Advisor W	= XXXXXXXXXXXXXXXXXXXX
Individual M	= XXXXXXXXXXXXXXXXXXXX
Financial Institution E	= XXXXXXXXXXXXXXXXXXXX
Financial Institution F	= XXXXXXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXXXXXX
Account P	= XXXXXXXXXXXXXXXXXXXX
	XXXXXXXXXXXXXXXXXX
Account Q	= XXXXXXXXXXXXXXXXXXXX
	XXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXX
Year 3	= XXXXXXXXXXXXXXXXXXXX

Dear :

This is in response to a letter dated July 10, 2007, as supplemented by correspondence dated May 16, 2008, and May 21, 2008, submitted on your behalf by your authorized representative requesting a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, under age 70 ½, represents that he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover of Amount D within the 60-day rollover period prescribed by section 408(d)(3) of

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the Code was due to errors committed by Financial Advisor W and Financial Institution F.

Taxpayer A, represents that on Date 1, upon the advice of Financial Advisor W, he requested and received a distribution of Amount D from IRA X maintained at Financial Institution E with the intent of rolling Amount D into an IRA at Financial Institution F. On Date 1, Financial Institution E issued Taxpayer A a check for Amount D that Taxpayer A deposited into Account Q, a non-IRA account held jointly with Taxpayer A's spouse. On Date 2, Taxpayer A gave Financial Advisor W a check drawn on Account Q in Amount D payable to Financial Institution F with the specific notation "IRA rollover ..." Financial Advisor W, states that Taxpayer A instructed him to roll over Amount D, which he knew had been distributed from IRA X, to another IRA. Taxpayer A represents that Financial Advisor W provided to Taxpayer A a Financial Institution F Individual New Account Application. Financial Advisor W acknowledges that he was unaware that the form that he provided was not the appropriate application to establish a rollover IRA.

Taxpayer A represents further that he noticed the discrepancy in Year 3, and on Date 3, he contacted Individual M, a Financial Institution F representative, and was informed that initially Amount D was placed into an IRA account but when Financial Institution F realized that the check notation differed from the application, it changed the account to match the application. Neither Taxpayer A nor Financial Advisor W was contacted about the switch from an IRA to a non-IRA investment account, and Taxpayer A believed that the rollover had been successful until he was alerted to the problem in Year 3.

Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to errors committed by Financial Advisor W in completing the wrong IRA application; and by Financial Institution F in failing to contact Taxpayer A before reconciling the discrepancy between the check and the application by transferring Amount D into Account P, a non-IRA account, where it still remains. Amount D has not been used for any other purpose.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

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Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any the time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example,

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in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertions that he failed to complete a rollover of Amount D within the 60-day rollover period prescribed by section 408(d)(3) because of errors committed by Financial Advisor W and Financial Institution F.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent. A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact XXXXXXXXXX, ID Number XXXXXXXX, at XXXXXXXXXX. Please address all correspondence to SE:T:EP:RA:T4

Sincerely yours,

for

Ada Perry

Donzell H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose